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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-204

CASPAR W. WEINBERGER,
Secretary of Health, Education & Welfare,
Petitioner,

v.

GEORGE ELDRIDGE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The respondent states that the Secretary of Health, Education and Welfare has accurately stated the opinions and references thereto in his brief.

JURISDICTION

The Secretary of Health, Education and Welfare has accurately stated the jurisdiction of this Court in his brief.

QUESTION PRESENTED

Was George Eldridge denied due process of law under the Constitution of the United States when his Social Security Disability Benefits, which had twice been awarded him following a full evidentiary hearing, were terminated by the Secretary of Health, Education and Welfare without the opportunity being afforded him of an evidentiary hearing, of equal purport, as the hearing in which he was found to be entitled to such benefits?

STATEMENT

The respondent does not disagree with the statement made in the Secretary's brief, however points out that George Eldridge was initially awarded disability benefits by a hearing examiner (now Administrative Law Judge) on June 8, 1968. These benefits were terminated without affording George Eldridge *any* opportunity of offering evidence of continued disability on February 18, 1970. On June 26, 1970, the United States District Court for the Western District of Virginia ordered benefits to continue until a final determination was made. On May 6, 1971, approximately sixteen (16) months following the decision to terminate benefits, a

hearing examiner for the Social Security Administration determined George Eldridge's disability had not ceased.

On June 12, 1972, George Eldridge was advised that it had been determined that he was *again* no longer disabled as of May, 1972. He was not advised of what medical reports or what doctors had made this determination. In fact, assuming that George Eldridge could and did read and understand the contents of the termination letter (which may or may not be a false assumption), he was not told that the cumulative effect of his impairments were not disabling (as is required by Social Security regulations to be done by a physician designated by the Secretary of Health, Education, and Welfare).

George Eldridge, then, was advised that it had again been determined (for a third time) that he was no longer disabled and that his disability benefits would cease in July, 1972. This was done irrespective of the two prior hearing determinations that he was indeed disabled, and irrespective of George Eldridge's own assertions that his condition had worsened.

The United States District Court for the Western District of Virginia enjoined the Secretary from withholding disability benefits noting that the Secretary's procedures failed to satisfy due process standards.

Thus, after a *third* hearing before a tribunal, it was again determined that George Eldridge's disability continued, and his benefits should not cease.

SUMMARY OF ARGUMENT

George Eldridge's disability benefits were terminated by the Secretary of Health, Education and Welfare without an opportunity for an evidentiary hearing, even though his disability had been twice found continuing at evidentiary hearings. George Eldridge was thus denied his constitutional due process. While a good volume of the Secretary's brief is devoted to propounding the procedural system of the Social Security Administration and the virtues of the same, it is submitted that it has not shown any justifiable reason for terminating George Eldridge's disability benefits without affording him an opportunity for an evidentiary hearing.

The Secretary has not shown that less stringent due process standards should be afforded Social Security disability recipients upon termination of benefits than those outlined in *Goldberg v. Kelly*, 397 U.S. 254 (1970).

The Secretary does not contend that George Eldridge's continued receipt of disability benefits is not a property interest protected by due process considerations (brief, p. 36).

George Eldridge was twice awarded benefits following evidentiary hearings. He had been determined not to be disabled prior to each of the evidentiary hearings. It may be true that "he who giveth may taketh away", but it is respectfully submitted that the taking should be done only after the beneficiary has been afforded an opportunity for an evidentiary hearing of equal import or status as the two prior hearings at which his benefits were awarded.

ARGUMENT

Where a disability recipient is found to have a disability following a "full-blown" evidentiary hearing, benefits should *not* be terminated prior to an equally "full-blown" evidentiary hearing.

The Social Security Administration at no time informed George Eldridge that his condition had improved. Indeed, the Secretary points out in his brief that George Eldridge informed the State Agency that the Agency already had "enough evidence" (p. 8, 11, 34) to show that he was disabled within the meaning of the Social Security regulations. Logically, if one has been determined disabled twice before quasi-judicial administrative proceedings, which entailed an evidentiary hearing, and one is not advised that his condition has improved, then certainly, he reasons, his benefits should not be summarily terminated without the benefit of a hearing of at least equal due process standards as the hearing which had twice awarded him the benefits. It is noted that approximately eighteen months elapsed from George Eldridge's notice in February 1970 that his disability had terminated and the decision of the hearing examiner in May 1971 holding that his disability had indeed not ceased. This was a full eighteen months in which George Eldridge and his children would have been without benefits (to which he was ultimately found to be entitled). Eighteen months for a disabled individual with dependent children is an extremely long time to be summarily denied benefits from a system to which he has contributed.

The Secretary argues that in determining what procedures utilized in denying or terminating statutory benefits satisfy due process, the competing interests must be accommodated. The interests are held by this Court to be:

1. The workers' interest in continued receipt of disability insurance benefits assessed in light of the *reliability* (emphasis added) of the existing procedures and

2. The government's interest in avoiding unneeded administrative burdens and costs that would deplete the ability of the disability insurance trust fund to pay out the maximum proportions of its revenues as benefits to eligible workers.

It is submitted that George Eldridge's case shows and emphasizes the non-reliability of the Secretary's termination procedures. Twice did the termination procedures dictate the termination of benefits and twice were these procedures shown to be inaccurate and wrong after George Eldridge was given a hearing before a hearing examiner.

The Secretary has argued in his brief that disability benefits are unrelated to need, thus distinguishing this case from *Goldberg v. Kelly*. Indeed, a widower shown to be twice totally and permanently disabled, and with dependent children, could hardly be in more need. Not only is a disability recipient unable to seek employment due to his physical impairment, but other assistance programs may well deny benefits because of his potential eligibility to disability benefits through Social Security. The Secretary urges that a worker should avail himself to welfare benefits if they are truly needy. It is submitted that one should not force himself to

indigency due to the procedures selected by the Secretary, which procedures he has twice found to be unreliable.

While cross-examination may be of limited value where there is a question which is medical in nature, there can be no question, however, of the value of rebuttal evidence and actual testimony and face-to-face confrontation and viewing of the claimant. An evidentiary hearing, where the claimant himself makes an appearance, gives the decision-maker the opportunity to actually view the claimant and witness his condition, whether it be physical or mental, and allow the claimant an opportunity to present his side of the case.

It is recognized that there are those individuals who qualify for Social Security benefits, who later recover and are able to become gainfully employed. For those who are only temporarily disabled and should be terminated, it is submitted that procedures could be instituted by the Secretary to allow the recipient to elect a hearing or not. If a hearing is chosen, and the disability recipient is unsuccessful, then the overpayment would be recoverable from his future earnings. For those, such as George Eldridge, the success would not be an empty success, which follows financial disaster and resulting emotional calamity.

As pointed out on page sixteen (16) of the Secretary's brief, a claimant must "prove disability". That is, he must prove that he is permanently and totally disabled. This is exactly what George Eldridge did in proving his entitlement to disability benefits. He had been through the entire allegedly "reliable" administrative procedure twice, and twice he had been awarded benefits when the person making the decision

saw him and gave him an opportunity to appear before him.

The record does not reveal that an opportunity was ever given George Eldridge to participate in any rehabilitation program. Therefore, it would appear that the discussion in the Secretary's discussion of termination following rehabilitation is totally inapplicable in George Eldridge's case.

It is submitted that the figures quoted by the Secretary on page fifty four (54) of his brief are indeed misleading. Certainly where one must submit birth certificates and where a work record or marriage license is needed to substantiate or justify termination, then no hearing could possibly be beneficial or warranted.

The Secretary points out on page forty (40) of his brief that "termination of disability benefits will ordinarily result only when there has been some distinct change of circumstances." The record is void of any indication of any distinct change in George Eldridge's condition. Indeed, George Eldridge asserted that his condition had worsened. The Social Security Administration termination letter indicated no new medical evidence that his condition had improved. In George Eldridge's case, evidence that his condition had progressed from being unable to engage in any substantial gainful activity to employable was non-existent.

The United States Court of Appeals for the Fourth Circuit has held that there are four elements of proof to be considered in making a finding of a Claimant's disability under the Social Security Program. In addition to the objective medical facts, diagnosis and expert medical opinions on subsidiary questions of fact

and the claimant's education, background, work history, and present age, the Court lists "the subjective evidence of pain and disability testified to by Claimant, and corroborated by his wife and his neighbors" *Underwood v. Ribicoff*, 298 F.2d 850, 851 (4th Cir., 1962). In *Underwood*, the Court stated that "expert medical diagnostic opinion and evidence, alone, may not enable a fact finder properly to determine whether or not such limitation of capacity amounts to disability within the terms of the Act. *Underwood v. Ribicoff*, supra, at p. 852.

The Secretary is urging that the Court in *Underwood* was wrong concerning subjective evidence, or any evidence other than the "cold record." The history of George Eldridge's case clearly shows the importance of such evidence. The Secretary urges that the claimant should be left to the mercy of the reporting doctor's ability or inability to compose a report which will relay the extent of the claimant's disabilities. It is submitted that George Eldridge is statistical proof that such reports do not inevitably suffice in revealing the disability of a claimant.

In arguing that other assistance programs are available for the disability recipient, the Secretary has failed to discuss the eligibility requirements for such assistance. Welfare benefits usually require one to be destitute and without any appreciable assets. This is certainly no acceptable substitute for a worker who suddenly finds himself unable to work and unable to support himself or dependents. As to the alternative benefits available, it is pointed out that:

1. Qualification for welfare benefits may require more stringent standards than qualification for Social Security disability benefits.

2. A welfare recipient may submit his property to a lien for the amount of assistance received.

3. Welfare benefits do not commence spontaneously but rather start after a sometimes lengthy investigation.

Applications of Goldberg vs. Kelly Hearing Requirements to Termination of Social Security Benefits, 26 Stanford Law Review 549 (1974).

As stated by this Court, "it is immediately apparent that one cannot automatically apply procedural rules designed for free citizens in an open society, or for parolees or probationers under only limited restraints, to the very different situation presented by a disciplinary proceeding in a state prison." *Wolff v. McDonnell* 42 U.S.L.W. 5190 (1974). In *Wolff,* this Court held that, in state prison disciplinary proceedings, an inmate should be allowed to call witnesses on his own behalf when to do so would not jeopardize prison safety or correctional goals. *Wolff,* at p. 5198. In *Wolff,* this Court was dealing with a state prison system and based its decision against the background of the disciplinary procedures required in such an institution. In the case presently under consideration, there is no danger of prison disruption as was present in *Wolff,* supra, and it is submitted that the only disruption is that propounded by the Secretary in his brief which does not appear to be substantiated by the statistics, especially where such a basic constitutional right as due process is concerned. *Goldberg v. Kelly,* supra, at 265.

It is submitted that George Eldridge is as much entitled to an opportunity for an evidentiary hearing concerning his termination of disability benefits as:

1. A welfare recipient concerning his welfare check, *Goldberg v. Kelly,* supra;

2. A wage earner concerning his paycheck, *Sniadach v. Family Finance Corp.,* 395 U.S. 337 (1969);

3. A parolee concerning his freedom, *Morrisey v. Brewer,* 408 U.S. 471 (1972);

4. A prison inmate concerning his good time credits, *Wolff v. McDonnell,* supra;

5. A consumer concerning his old stove, *Fuentes v. Shevin,* 407 U.S. 67 (1972);

6. An uninsured motorist concerning his license, *Bell v. Burson,* 402 U.S. 535 (1971);

7. An elderly person concerning his Medicare benefits, *Martinez v. Richardson,* 472 F.2d 421 (10 Cir. 1973).

8. A student concerning his suspension from school, *Goss v. Lopez* 43 L.W. 4181 (1975).

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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